

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

June 9, 2011

John W. Paradee, Esquire
Stephen E. Smith, Esquire
Nicole M. Faries, Esquire
Prickett, Jones & Elliott
11 North State Street
Dover, DE 19901

Mark McGreevy
109 Kelly Drive
Chaddsford, PA 19317

RE: Smith, et. al. v. Caldera Properties - Nassau Grove, LLC, et. al.
C.A. No. S09C-05-005-ESB
Letter Opinion

Date Submitted: April 26, 2011

Dear Messrs. Paradee and McGreevy:

This is my decision on the Motion to Set Aside Sheriff's Sale filed by Plaintiffs Roger L. Smith, Resort Realty Group, Inc., Louis Travelini and Coastal Real Estate, Inc. The Plaintiffs obtained a default judgment for unpaid real estate commissions in the amount of \$757,700 against Defendant Caldera Properties - Nassau Grove, LLC on February 19, 2010. The judgement became a first lien on the Defendant's 3.64 unimproved parcel of real estate located on the southwest side of State Route One and north of the Maryland and Delaware Railroad (the "Property"). The Property originally consisted of 112.28 acres and was purchased by the Defendant for \$7,506,429.50 in 2005. Some of the Property was developed and some of it was transferred to the State of Delaware for road improvements, leaving a landlocked 3.64 acre parcel of land. In order to execute on their judgment, the Plaintiffs directed the Sussex County Sheriff to schedule a Sheriff's Sale of the Property. The Sussex County Sheriff held a Sheriff's Sale of the Property on January

18, 2011. There were 75 to 100 properties for sale and 40 bidders in attendance that day. The Plaintiffs and their attorney attended the Sheriff's Sale, but did not make a bid for the Property because they were financially unable to do so. They instead hoped that someone else would bid for the Property and allow them to recover some of their judgment against the Defendant. Mark McGreevy made the winning bid of \$1,000. He is a principal of the Defendant, but was not bidding on behalf of the Defendant. The Plaintiffs then filed a Motion to Set Aside Sheriff's Sale, arguing that (1) the sale price is too low, and (2) the result is unjust and inequitable. The Plaintiffs state that if they get a second chance at a Sheriff's Sale of the Property they would bid for it. They will also try to get some other people in the real estate development community interested in bidding for the Property. McGreevy argues that there was a properly conducted Sheriff's Sale of the Property that properly established its fair market value and that it would be unjust to him for the Court to give the Plaintiffs what amounts to a "do-over" simply because they did nothing to protect their own interests at the Sheriff's Sale.

THE APPLICABLE LAW

"The objective of judicial scrutiny of sheriff's sales is not to delay the consummation of the execution but to assure that the defaulting obligor has received just treatment in the execution process."¹ Although protection of the rights of the defaulting mortgagor is of paramount importance in reviewing a sheriff's sale, it has long been recognized that any party with an interest in the property sold or the proceeds of the sale may object to its

¹ *Girard Trust Bank v. Castle Apartments, Inc.*, 379 A.2d 1144, 1147 (Del. Super. 1977).

confirmation.² A party may challenge a sheriff's sale which is procedurally correct if the party can demonstrate that he or she has suffered detriment.³ Indeed, a petition to set aside a sheriff's sale "is simply the means whereby a person who considers himself aggrieved may call the Court's attention to some defect, irregularity, neglect, misconduct or other sufficient matter whereby his rights have been prejudiced."⁴

While it is somewhat unusual for a bidding mortgagee, or as in this case, a judgment holder, to seek to invalidate a sheriff's sale, where detriment can be shown, standing will be recognized.⁵ It is a well-established rule in Delaware that mere inadequacy of price, standing alone, is an insufficient ground for setting aside a judicial sale.⁶ A sheriff's sale may be set aside, however, when the sales price is so grossly inadequate that it shocks the conscience of the court.⁷ This determination is largely dependant upon the particular circumstances of the individual case.⁸ A decisional standard has evolved in the Superior Court, however, which requires special judicial scrutiny where a property sold at the sheriff's sale fails to secure a bid which represents at least fifty percent of its fair market

² See, e.g., *Petition of Adair*, 190 A. 105, 107 (Del. Super. 1936).

³ *Girard Trust Bank*, 379 A.2d at 1145.

⁴ *Central National Bank of Wilmington v. Industrial Trust Co.*, 51 A.2d 854, 856 (Del. Super. 1947).

⁵ See Annotation, *Relief to Person Who By Mistake Has Foreclosed Real Estate Mortgage in Manner Inimical to His Own Interests*, 42 ALR 1192; 55 Am.Jur.2d *Mortgages* § 777.

⁶ 2 Victor B. Woolley, *Practice in Civil Actions in Delaware*, § 1121 (1906).

⁷ *Id.*

⁸ *Id.*

value.⁹ If the fair market value of the property is over twice the sales price, the price is considered to be grossly inadequate, shocking “the conscience of the court,” and justifying the setting aside of the sale.¹⁰ However, the 50% test is not the sole touchstone of acceptability. Court approval of the disputed sheriff’s sale depends on “the particular circumstances of the case.”¹¹ When the Superior Court reviews a sheriff’s sale, it may consider factors other than price. Specifically, it must ascertain whether there was “some defect or irregularity in the process or mode of conducting the sale, or neglect of duty, or misconduct on the part of the Sheriff or some other sufficient matter...whereby the rights of parties to, or interested in the sale are, or may have been, prejudiced.”¹² Woolley states a similar view:

Where there has been mistake, misconduct or fraud in the course of the sale, whereby any of the parties to or interested in the proceeding are prejudiced, it may be corrected by an application on the part of the party aggrieved to set the sale aside. The power of the court in this respect is broad and discretionary...¹³

The sales price need not be unconscionable in order for the court to set aside a sheriff’s sale.¹⁴ Delaware courts may, in their discretion, set aside a sale where inadequacy of price

⁹ *Burge v. Fidelity Bond and Mortgage Company*, 648 A.2d 414, 419 (Del. 1994).

¹⁰ 2 *Woolley’s Delaware Practice*, § 1121; *Central National Bank*, 51 A.2d at 858; *Home Beneficial Life Insurance Co. v. Blue Rock Shopping Center Etc.*, 379 A.2d 1147, 1149 (Del. Super. 1977).

¹¹ *Id*; *Girard Trust Bank*, 379 A.2d at 1146.

¹² *Petition of Adair*, 190 A. at 107.

¹³ 2 *Woolley’s Delaware Practice*, § 1108.

¹⁴ *Burge*, 648 A.2d at 419.

will result in unfairness or work an injustice on any party having an interest in the outcome of the sale.¹⁵ Fraud, mistake, accident, impropriety, misconduct, surprise or irregularity in the sale process will support judicial invalidation of the sale.¹⁶ Judicial review of a sheriff's sale implicates the court's inherent equitable power to control the execution process and functions to protect the affected parties from injury or injustice.¹⁷ This equitable power derives from the inherent control of the court over its own process "for the correction of abuses or the prevention of injury."¹⁸ This discretion is not without limitation. For instance a court may not arbitrarily or capriciously refuse to confirm a sale, where there are no irregularities in the sale proceedings and no fraud, unfairness, or other extraneous matter demonstrating unfairness to one of the interested parties is shown.¹⁹ Thus, a properly conducted sale should be set aside only when necessary to correct a plain injustice, consistent with principles of equity.²⁰

THE SALE PRICE

The Plaintiffs candidly admit that they do not know the fair market value of the Property, which is not surprising given the unusual nature of it and the circumstances of this case. The Property is what was left over after the overwhelming majority of it was

¹⁵ *Id.*

¹⁶ 59 C.J.S. *Mortgages* § 744; *Arlt v. Buchanan*, 190 So.2d 575, 577 (Fla. 1966).

¹⁷ *Petition of Adair*, 190 A. at 107.

¹⁸ *Petition of Seaford Hardware Co.*, 132 A. 737, 738 (Del. Super. 1926).

¹⁹ 59 C.J.S. *Mortgages* § 744(2)(a).

²⁰ *Karel v. Davis*, 194 A. 545, 546 (N.J. 1937).

either developed by another real estate developer or donated to the State of Delaware for road improvements. The remaining 3.64 acre parcel is landlocked and can be accessed only by crossing over an adjoining property. The Plaintiffs believe that the Defendant may have an easement over the adjoining property, but have offered no proof of it. McGreevy stated that he was taking the risk that he can not get access to the Property. The Plaintiffs also believe that the Defendant is trying to place a billboard on the property, which would produce some revenue and make the Property worth something. McGreevy acknowledged that he was trying to do this. In any event, the best that the Plaintiffs can do is to argue that the Property is worth at least \$2,000, making McGreevy's bid fail the 50% test. However, even if the fair market value of the Property is twice the sale price, it does not shock my conscience. I am, based on the Plaintiffs' argument, considering a difference of only \$1,000 in a case that involves a judgment for \$757,700. This is simply not enough to justify setting aside the Sheriff's Sale, particularly since the Plaintiffs took no action to either generate interest in the Property or bid on it themselves.

UNJUST AND INEQUITABLE

The Plaintiffs argue that it would be unjust and inequitable for the Defendant to reacquire the Property for \$1,000 free and clear of their \$757,700 judgment. The Plaintiffs' argument is both factually and legally incorrect. The winning bidder is McGreevy, not the Defendant. According to his testimony at the hearing, McGreevy was bidding on behalf of a third party unrelated to the Defendant. Thus, as a matter of fact, the Defendant will not be reacquiring the Property. Moreover, the identity of the buyer is of no consequence. The only thing that really matters, as far as the Plaintiffs are concerned, is the sale price. The Plaintiffs certainly would have been satisfied if the sale price had been sufficient to pay off

their judgment, regardless of who ended up purchasing the Property. As I stated earlier, given the unique nature of the Property and the lack of evidence about the fair market value of it, the \$1,000 sale price does not shock my conscience. Moreover, the Plaintiffs were in a position to protect their own interests, but did not do so. The Plaintiffs were in complete control of every aspect of the Sheriff's Sale. They could have held it wherever it was best for them to do so. If the Plaintiffs did not have enough money to bid on the Property, which because of their first lien position would have only needed to have been enough to pay the taxes due and sale costs, then they could have waited until they had enough money to do so. The Plaintiffs elected not to wait and went ahead with the Sheriff's Sale. This was a conscious decision on their part. The Plaintiffs have not identified any mistake, misconduct or fraud in the course of the conduct of the Sheriff's Sale that would justify setting it aside. This is simply a case of the Plaintiffs failing to protect their own interests. The Plaintiffs' Motion to Set Aside Sheriff's Sale is denied.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office
cc: Sheriff's Office